

# City of Detroit

## CITY COUNCIL

DAVID D. WHITAKER

Director  
(313) 224-4946

DIVISION OF RESEARCH & ANALYSIS  
Coleman A. Young Municipal Center  
2 Woodward Avenue, Suite 216  
Detroit, Michigan 48226  
(313) 224-4946  
FAX: (313) 224-0368

PEGGY ROBINSON

Deputy Director  
(313) 224-4946

TO: The Honorable City Council

FROM: David Whitaker  
David Teeter  
Elizabeth Cabot

DATE: March 1, 2006

RE: **FINAL DRAFT OF THE MEMORANDUM OF AGREEMENT WITH THE  
DETROIT ZOOLOGICAL SOCIETY**

The Research and Analysis Division (RAD) and Fiscal Analysis staff met yesterday afternoon with representatives of the Law Department and the Detroit Zoological Society to address City Council's remaining concerns as to the proposed Memorandum of Agreement (MOA) with the Society (DZS). The Law Department prepared a revised draft last evening that was circulated this morning.

The group addressed issues discussed at City Council's Monday, February 27, 2006 session. The DZS agreed to many of the issues raised and these are reflected in the revised document. Requested changes that have been incorporated are as follows:

- Section 6.1 has been amended to reference section 7-1602 of the City Charter referring to the zoo commission.
- Section 4.1 has been amended to indicate that the DZS will provide an annual list of completed assets and tender them for acceptance by the City.
- Section 5.3 has been amended to expressly state that the DZS "is liable for and will indemnify" the City for liability associated with its operation of the zoo with respect to injury claims. The City retains liability for simple negligence relative to its own property.
- Section 5.2 has been amended to indicate that for year 3 and beyond, appropriations for insurance will be subject to the City's budget process.
- Section 5.2 has been amended to reference Exhibit A, which is to indicate minimum levels of insurance to be carried by the DZS. RAD has not received this exhibit at this writing and understands that the DZS will provide it to the Council.
- Regarding security costs, section 5.2 has been amended to indicate that such costs will be requested through the City's budget process (for the 3d year and beyond),

that the City will take into consideration the DZS's ability to pay, and agrees to appropriate such additional amount as is necessary to cover the costs.

- Section 7.12 has been amended to provide that the DZS cannot use City funds to subcontract or enter into a joint venture or joint development agreement with another government entity without the prior consent of the City.

Issues that remain unresolved are the following:

- The DZS stands firm on the provision in section 7.6 allowing unilateral termination by the DZS based upon a determination of "unfeasibility". It was agreed that "feasible" would be defined as based upon an economic assessment. This definition, however, does not appear in the document. The DZS made a strong argument for the unilateral one-year termination provision and it is RAD's understanding that a representative of the DZS will address the Council on this point. The revised agreement adds language indicating that the one-year notice cannot be given until the commencement of the second year of the agreement thus guaranteeing the City a minimum of two years of zoo operation by the DZS. Other terms of the default provision remain the same.
- The agreement's term remains 15 years. The DZS felt that a 12-year term was unworkable for a variety of reasons primarily related to its ability to raise funds. The DZS is best able to address this issue.
- Council expressed a desire to appoint a second member to the DZS Board of Directors. This was discussed and although no clear opposition was raised, section 3.5 reflects that Council will appoint one member.
- Council asked that, consistent with the DIA agreement, any bond proceeds for capital expenditures should be contracted through the Detroit Building Authority and administered in the manner in which bond funds are traditionally expended. Although the agreement does not reflect this, Mr. Short has indicated that these funds will continue to be administered in this manner.

Attached to this report are documents provided by the Law Department to RAD for reference that include a memorandum of understanding between the zoo and the DZS (it appears to be approximately ten years old), the DZS bylaws (which were scheduled to be amended at a membership meeting this morning), and a six year plan. RAD has not had the opportunity to review these documents.